D.B. CIVIL SPECIAL APPEAL (Writ) NO.313/2007

Rupal Agarwal Vs. University of Rajasthan & Ors.

Date of Order :: September 13, 2007.

HON'BLE THE ACTING CHIEF JUSTICE MR.J.M. PANCHAL
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. L.L. Gupta for the appellant.
Mr. R.A. Katta for the respondents nos.1 and 2.
Mr. Vikrant Gupta for the respondent no.3.

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Admitted.

Mr. R.A. Katta, learned advocate waives service of notice on behalf of the respondents no.1 and 2. Mr. Vikrant Gupta, learned advocate waives service of notice on behalf of the respondent no.3.

Having regard to the facts of the case, the appeal is taken up for final disposal today.

By filing the instant appeal, the appellant has challenged legality of the judgment dated January 29, 2007 rendered by the learned Single Judge in S.B. Civil Writ Petition no.213/2007 by which the prayer made by the appellant (i) to set aside the order dated November 13, 2006 passed by the University refusing to amend the result sheet of the appellant and (ii) to direct them to include the marks awarded to her in sessional of Computer Programming Lab, that is, 43 marks out of 60% component and accordingly correct the mark-sheet issued to her, are rejected.

The appellant appeared in the examination of B.E. II Year (Third Semester) which was held in December 2005. The result of the said examination was declared on July 17, 2006. In the subject of Computer Programming Lab, no sessional marks were allocated to the appellant and she was shown to be absent, though she had appeared in all subjects. Therefore, she complained to the respondent no.3. The respondent no.3 which is a Government College addressed

a letter dated August 02, 2006 and requested the University to correct the error as the appellant had secured 43 marks out of 60% component. The University declined the request made by the college vide communication dated November 13, 2006. Thereafter, mark-sheet was issued to the appellant on November 23, 2006 indicating that she was absent in the subject of Computer Programming Lab. Thereupon, the appellant invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution by filing S.B. Civil Writ Petition no.213/2007 and claimed the reliefs which are referred to earlier. The learned Single Judge has rejected the petition by order dated January 29, 2007 giving rise to the instant appeal.

This Court has heard the learned counsels for the parties and taken into consideration the documents forming part of the petition.

From the record of the case, it is evident that internal assessment mark-sheet was not sent by the respondent no.3-College to the University at the relevant time for which the appellant was not responsible at all. The view taken by the learned Single Judge that the internal assessment mark-sheet was sent by the College to the University much after declaring the result and issuing of the mark-sheet as a result of which the petition was liable to be dismissed, cannot be upheld inasmuch as after the result was declared, the appellant had come to know that her absence was marked as far as subject of Computer Programming Lab was concerned, after which she had approached the College and the College on realizing the mistake had sent internal assessment mark-sheet to the University. In view of the stand taken by the respondent no.3-College, there is no manner of doubt that there was bona fide mistake on the part of the College in not sending internal assesment mark-sheet to the University for which the appellant cannot be penalised. On the facts and in the

circumstances of the case, this Court is of the view that good ground is made out by the appellant for granting the reliefs claimed in the petition.

For the foregoing reasons, the appeal succeeds. The judgment dated January 29, 2007 rendered by the learned Single Judge in S.B. Civil Writ Petition no.213/2007 is set aside. The order dated November 13, 2006 passed by the respondent-University declining to amend the result sheet of the appellant is also set aside. The respondents no.1 and 2 are directed to include the marks awarded to the appellant in sessional of Computer Programming Lab (Subject Code-3136-I), that is, 43 marks out of 60% component and accordingly correct the mark-sheet issued in her favour as early as possible and preferably within 15 days from the date of production of certified copy of this order before the competent authority.

Subject to above-referred-to direction, the appeal stands allowed. There shall be no order as to costs.

(MOHAMMAD RAFIQ), J. **(J.M. PANCHAL), Actg.CJ.**

Skant/-